

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JEFF DEY,	:	Case No. 3:18-cv-106
	:	
Plaintiff,	:	District Judge Thomas M. Rose
	:	Magistrate Judge Sharon L. Ovington
vs.	:	
	:	
COMMISSIONER OF THE SOCIAL	:	
SECURITY ADMINISTRATION,	:	
	:	
Defendant.	:	

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**DECISION AND ENTRY**

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This case is before the Court upon Plaintiff's Motion for Allowance of Attorney Fees (Doc. #15). The Commissioner does not oppose Plaintiff's Motion. (Doc. #16).

The Motion seeks an award of attorney fees under 42 U.S.C. § 406(b)(1) in the total amount of \$12,000.00. In the absence of opposition by the Commissioner, the Motion and supporting exhibits establish that an award of attorney fees is reasonable and warranted under 42 U.S.C. § 406(b)(1) in the amount the Motion seeks.

In addition, the Court previously accepted the parties' stipulation to an award of \$2,750.00 in attorney fees to Plaintiff's counsel under the Equal Access to Justice Act (EAJA). (Doc. #s 13, 14). The EAJA award, however, was subject to offset in the amount of any debt Plaintiff owed the Government. *See* Doc. #14. Counsel may not recover attorney fees under both the EAJA and 42 U.S.C. § 406(b) for the same work.

Plaintiff's counsel must therefore return to Plaintiff the amount of EAJA fees, if any, he has actually received. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002).

**IT IS THEREFORE ORDERED THAT:**

1. The Motion for Allowance of Attorney Fees filed by Plaintiff's attorney (Doc. #15) is GRANTED;
2. The Commissioner shall pay Plaintiff's attorney fees pursuant to 42 U.S.C. § 406(b)(1) in the amount of \$12,000.00;
3. Plaintiff's counsel shall refund to Plaintiff the amount of attorney fees, if any, he has actually received under the Equal Access to Justice Act; and
4. The case remains terminated on the docket of this Court.

**IT IS SO ORDERED.**

Date: March 3, 2020

\*s/Thomas M. Rose  
Thomas M. Rose  
United States District Judge